



July 6, 2011

Via Electronic Comment Filing System

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: WT Docket No. 11-84, Comments of the Direct Marketing Association

Dear Secretary Dortch:

The Direct Marketing Association (“DMA”) is pleased to submit these comments to inform the forthcoming Federal Communications Commission (“FCC”) staff report on helping consumers navigate location-based services (“LBS”).

I. Introduction

The DMA (www.the-dma.org) is the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing tools and techniques. The DMA advocates industry standards for responsible marketing; promotes relevance as the key to reaching consumers with desirable offers; and provides cutting-edge research, education, and networking opportunities to improve results throughout the end-to-end direct marketing process. Founded in 1917, the DMA today represents thousands of companies from dozens of vertical industries in the United States and 50 other nations, including a majority of the Fortune 100 companies, as well as nonprofit organizations. Our membership includes cataloguers, financial services, book and magazine publishers, retail stores, industrial manufacturers, Internet-based businesses, and a host of other segments, as well as the service industries that support them.

LBS enrich consumers’ daily lives through a host of exciting tools and services. The booming market for LBS also benefits consumers by generating jobs, business investment, and economic growth. To protect these consumer benefits, the DMA cautions against adopting any new legislation or regulation that could endanger the thriving LBS market. The DMA recognizes the importance of protecting the privacy of consumers’ location and other mobile data, and believes that the best way to realize this goal is through robust and enforceable industry self-regulation combined with consumer education. Rather than limiting specific business models or practices, the focus of such efforts should be on providing transparent notice and ensuring that consumers can make informed choices.

II. Consumer Benefits of LBS

As the FCC's Public Notice recognizes, LBS benefit consumers in many ways. The increasing popularity of mobile devices has fueled an explosion in innovative products and services based on LBS. Consumers have flocked to such resources, which include everything from local weather tracking, to map and direction services, to traffic and transit system updates, to social media tools for connecting with friends in the same vicinity. Consumers have also widely embraced marketing uses of mobile technologies, such as the ability to get special offers or compare products while shopping.

LBS also benefit consumers by boosting the economy. As a new technological frontier, LBS are attracting entrepreneurs and venture capital investment. Businesses of all kinds are finding that LBS are an exciting way to communicate with their customers and reach out to others who may be interested. In addition to new LBS business models that are continually emerging, existing companies are offering LBS that extend their business models into the mobile arena. LBS marketing has been a particular boon to smaller and local businesses, which are turning to LBS as an effective way to reach potential customers likely to be interested in their products and services. Such business successes contribute to economic and job growth in the technology sector.

III. Balancing Innovation and Privacy in Location-Based Services

The DMA recognizes that LBS raise important privacy and data security issues that merit careful consideration. Nevertheless, we note that such issues have not prevented American consumers' enthusiastic embrace of mobile technology. For example, in 2010, over seven million consumers planned to use their smart phones to shop on Cyber Monday alone.¹

Public policy should seek to address consumers' privacy interests in a manner that preserves the consumer benefits of LBS. It is therefore essential to avoid new legislation or regulation that could limit the availability or innovation of LBS for the millions of consumers who desire such services. Blanket limitations on LBS business models or practices could deter companies' entry into the mobile marketplace, thwart innovation, and inhibit competition. Instead, the focus should be on encouraging companies to provide consumers with notice of LBS information practices and the ability to choose whether to participate in LBS. Industry self-regulation and consumer education are the best ways to realize this goal.

¹ Press Release, Shop.org, "Over 106 Million Americans to Shop on Cyber Monday, According to Shop.org Survey" (Nov. 28, 2010), available at <http://www.shop.org/press/20101128>.

A. Industry Self-Regulation

The DMA strongly believes that industry self-regulation is the most efficient and effective way to protect consumer privacy interests in the vibrant mobile and LBS arenas. In our experience, industry guidelines strike an ideal balance between privacy and innovation. Industry self-regulation is flexible and can adapt in a timely manner to changes in markets, business practices, and advances in technology. This flexibility ensures that rules do not become outdated, which could inhibit innovation or allow technology to outpace consumer protections. As a result, more detailed standards may often be possible in a self-regulatory setting.

The DMA has long been a leader in establishing and enforcing comprehensive self-regulatory guidelines for its members on important issues related to privacy and e-commerce. DMA member companies, given their track record in delivering high-quality goods and services to consumers, have a major stake in the success of mobile technology and marketing. Our members are committed to building consumer trust in mobile technologies including LBS, and support robust self-regulation as the best way to meet that goal.

The DMA, with its members, has developed and adopted *Guidelines for Ethical Business Practice* (“Guidelines”) that provide comprehensive standards for marketing activities, including mobile and location-based marketing.² Under the current Guidelines, companies should:

- Inform individuals about how location information will be used, disclosed and protected so that the individual may make an informed decision about whether to share data or use services;³
- Refrain from sharing location data with third-party marketers unless the individual has given prior express consent for the disclosure;⁴
- Obtain consumers’ prior express consent to receive mobile marketing, including location-based marketing;⁵
- Provide notice of mobile marketing practices and an easy-to-use mechanism for opting out of mobile marketing;⁶ and

² DMA Guidelines for Ethical Business Practice, available at <http://www.dmaresponsibility.org/Guidelines/>.

³ *Id.* at Article 57.

⁴ *Id.*

⁵ *Id.* at Article 54.

⁶ *Id.* at Article 55-56.

- Restrict data collection and marketing for children online or via wireless devices, consistent with the Children’s Online Privacy Protection Rule.⁷

These are only a sample of the restrictions contained in the Guidelines, which provide DMA member companies with a comprehensive blueprint for ethical marketing practices. Compliance with the Guidelines is required for all DMA members and the DMA has a long history of proactive and robust enforcement. The DMA’s Committee on Ethical Business Practice works with both member and non-member companies to encourage cooperation in adhering to the Guidelines. Companies that fail to cooperate may be referred for government investigation. In addition to any other laws that may apply in such cases, companies that represent to the public that they are DMA members but fail to comply with the Guidelines may be liable for deceptive acts or practices.

In partnership with other leading trade associations and companies across the mobile marketing ecosystem, the DMA is also actively engaged in considering further industry guidelines for behavioral and location-based advertising under the auspices of the Digital Advertising Alliance (“DAA”). The DAA was established in 2010 to administer implementation of the Self-Regulatory Principles for Online Behavioral Advertising developed and adopted by the DMA and a coalition of trade association partners.⁸ The Self-Regulatory Principles provide an example of industry’s effectiveness in addressing emerging regulatory and consumer concerns while preserving businesses’ ability to innovate. As technology continues to evolve, the DAA is providing an institutional forum for convening industry leaders to consider how this promising self-regulatory effort can best respond to other evolving concerns, including LBS.

B. Consumer Education

The DMA believes that consumer education, such as the June 28, 2011 forum convened by the FCC, also plays a critical role in helping consumers make informed choices about LBS. The DMA, through its DMAchoice.org website for consumers, provides a host of consumer resources for understanding marketing and managing preferences.

Government agencies have a unique ability to provide consumer education. Both the FCC and Federal Trade Commission (“FTC”) offer online resources for consumers about mobile applications and other relevant topics, including a new FTC publication on “What You Should Know About Mobile Apps” that provides information and practical tips about how mobile applications function. The DMA supports such efforts to help

⁷ *Id.* at Article 16.

⁸ American Association of Advertising Agencies, Association of National Advertisers, Direct Marketing Association, Interactive Advertising Bureau, and Council of Better Business Bureaus, *Self-Regulatory Principles for Online Behavioral Advertising* (July 2009), available at <http://www.the-dma.org/government/ven-principles%2007-01-09%20FINAL.pdf>.



consumers become more informed about the marketplace and encourages the FCC and FTC to explore ways to continue and expand these efforts.

IV. Conclusion

LBS are transforming consumers' professional and personal lives through new products and tools. In turn, the success of LBS is spurring investment, job creation, and economic growth. To allow this exciting marketplace to continue to thrive, the DMA cautions against prescriptive legislation or regulation that could inhibit business innovation.

Ensuring that consumers receive meaningful notice and choices about LBS data practices will promote innovation while building consumer trust. The DMA believes that the most effective and efficient way to achieve this goal is through robust industry self-regulation coupled with consumer education. The DMA's existing Guidelines already address mobile and location data practices, and the DMA is actively working with its member companies to explore further evolution in industry self-regulation of LBS.

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The DMA appreciates the opportunity to submit these comments, and we look forward to continuing to work with the FCC to promote innovation and protect consumers in the LBS marketplace. Please contact me with any questions at (202) 861-2444 or lwoolley@the-dma.org.

Sincerely,

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